**Remarks/Arguments**

Applicants thank the Examiner for careful consideration of the application.

No claims have been allowed by the Examiner.

**I. Election/Restriction**:

Applicants continue to traverse Examiner's restriction requirement for all of the reasons previously stated. Applicants note that Examiner has not responded to any of Applicants request for further explanation including Examiner continues to provide no reasoned explanation of what each species is so that Applicants can reasonably respond to Examiner's restriction. In addition, Examiner continues to provide no reasoned explanation how the species Examiner has identified and the claims corresponding to those species are mutually exclusive. Applicants note that the statement that "indeed the species are considered mutually exclusive" is but a conclusory statement that contains no reasoned explanation. Applicants respectfully request Examiner provide in the Advisory Action a more detailed and reasoned explanation of what each species is, and provide a reasoned explanation of how Examiner finds the species Examiner has identified and the claims corresponding to those species are mutually exclusive in order to clarify the issues to be addressed in Applicant's petition to Commissioner to withdraw the improper restriction requirement.

**II. Rejections under 35 U.S.C. §102(b):**

Examiner, on page 3 of the Office Communication has rejected claims 1-2, 4-8, 11-14, 17-18, 46-47, and 49 under 35 U.S.C. §102(b) as being anticipated by Loughman (WO 99/38535, "Loughman"). This rejection is respectfully traversed with regard to claims 1-2, 4-8, 11-14, 17-18, 46-47, and 49 because all of the elements of the claimed invention are not present in the cited reference. Applicants continue to traverse all of Examiner's grounds for rejection (item numbers 50-58); however, in the interest of furthering prosecution Applicants will emphasize Examiner's rejection based on Loughman disclosing a device that includes a fluid ejector, wherein each activation of the fluid ejector generates essentially a drop, which Applicants respectfully believe is an unreasonable interpretation of the prior art.

As previously argued independent claim 1 discloses a "method of making a microcapsule, comprising: activating a fluid ejector at a frequency greater than 10 kilohertz, wherein each activation of said fluid ejector generates essentially a drop, said fluid ejector fluidically coupled to a first fluid including a core component; ejecting essentially said drop of said first fluid into a second fluid, said drop having a volume; and generating a microcapsule in said second fluid for each drop of said first fluid ejected, wherein said microcapsule includes said core component." In contrast, Applicants have previously argued Loughman discloses a method of forming encased bound microparticles using an ultrasonic atomizer (nebulizer). Applicants note in Examiner's response that Examiner does not appear to disagree with Applicants that Loughman discloses a method of forming encased bound microparticles using an ultrasonic atomizer (nebulizer). In addition, Examiner appears to rely upon what Applicants assert is an unreasonably broad interpretation of Applicants' claim wording of "essentially a drop," to in effect force it to read on Loughman. Examiner states that essentially a drop "does not exclude the generation of more than one drop." Applicants asset that the proper interpretation of "essentially a drop" is "about a drop," i.e. more than a drop in some cases but not many drops. Examiner further notes that each activation of Loughman's ultrasonic atomizer generates essentially a drop and hence can be clearly considered a drop-on-demand fluid ejector even though Examiner has not disagreed with Applicants' assertion that an atomizer generates many drops.

Applicants traverse Examiner's statement that an ultrasonic atomizer is a drop-on demand fluid ejector. In addition, Applicants traverse Examiner's statement that Applicants have not provided evidence to the contrary. First Applicants believe the burden of proof rests on Examiner to establish a prima facie case of anticipation using a reasoned argument based on sound technical and scientific reasoning that supports Examiner's assertion that Loughman discloses all aspects of the instant invention. Examiner has provided no reasoned argument but rather has provided only conclusory statements, which provide little information from which Applicants can argue. Applicants previously asserted that one of ordinary skill in the art would readily recognize the operation of an ultrasonic atomizer generates many drops upon each

activation of the atomizer. Applicants believe that Examiner may be incorrectly giving the limitation "essentially" an unreasonably broad interpretation to include any number of drops, i.e. Examiner is interpreting "essentially" to be equivalent to "a plurality," each of which is widely used in claiming. Applicants believe that each has a generally accepted interpretation which are different. Applicants respectfully request that Examiner provide in the Advisory Action some indication of how broadly Examiner is interpreting Applicants' claim language "essentially a drop," in order to clarify the issues to be addressed in Applicants' Appeal Brief. In addition, Applicants respectfully request that Examiner provide in the Advisory Action a more reasoned explanation of how Loughman in disclosing the use of an ultrasonic atomizer (nebulizer) discloses "activating a fluid ejector at a frequency greater than 10 kilohertz, wherein each activation of said fluid ejector generates essentially a drop," as claimed by applicants in the instant specification, in order to clarify the issues to be addressed in Applicants' Appeal Brief. The record to date only contains Examiner's assertion that an atomizer is a drop-on-demand device without any reasoned statements as to how it operates in such a manner as to anticipate Applicants claimed in invention.

As previously argued Applicants assert that an ultrasonic atomizer (nebulizer) produces many drops upon each activation and is not considered to be a drop-on-demand fluid ejector as Examiner asserts. Applicants further assert that Loughman does not provide any information to the contrary and Examiner has not provided any reference citation either within Loughman or other reference based on sound technical and scientific reasoning that provides support to Examiner's assertion. If Examiner is asserting that Examiner may simply make a conclusory statement that an ultrasonic atomizer (nebulizer) is a drop-on-demand fluid ejector Applicants traverse such a conlusory statement and assert that Examiner must rely on sound technical and scientific reasoning and provide that technical and scientific reasoning to Applicants so that Applicants may ascertain the basis of Examiner's reasoning without being left to guess or make assumptions as to what Examiner may or may not be asserting. At this time Applicants request under 37 C.F.R. §1.104(d)(2) that if Examiner is relying on personal knowledge then Examiner should provide an affidavit with specific factual findings predicated on sound technical and scientific reasoning that an ultrasonic atomizer is a

drop-on-demand device. Applicants argue that an atomizer or nebulizer is an apparatus that reduces a liquid to a fine spray. Applicants further assert that "essentially a drop" can only be considered a fine spray by giving Applicants' claim language an unreasonably broad interpretation that goes beyond the generally accepted meaning of "essentially" when used in a claim and therefore an atomizer or nebulizer can only be considered a drop-on-demand device by making an unreasonably broad interpretation of the commonly accepted meaning of the terms atomizer and/or nebulizer.

**III. Rejections under 103**:

Applicants continue to traverse Examiner's rejections based on 35 U.S.C. §103(a).

Therefore, in view of the foregoing Amendment and Remarks, Applicants believe the present application to be in a condition suitable for allowance. Examiner is respectfully urged to withdraw the rejections, reconsider the present Application in light of the foregoing Amendment, and pass the amended Application to allowance.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is respectfully requested to call Applicants' representative at (541) 715-1694 to discuss the steps necessary for placing the application in condition for allowance.

Favorable action by the Examiner is solicited.

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Respectfully submitted,
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